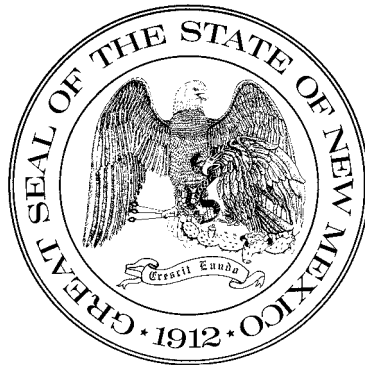


CONSTITUTIONAL AMENDMENTS

**PROPOSED BY THE LEGISLATURE
IN 2007 AND 2008**

**APPEARING ON THE NOVEMBER 4, 2008
GENERAL ELECTION BALLOT**

**BRIEF ANALYSIS
AND
ARGUMENTS FOR AND AGAINST**



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FOREWORD

On November 4, 2008, five proposed constitutional amendments will appear on the New Mexico general election ballot as the result of passage of joint resolutions by the New Mexico Legislature in its 2007 and 2008 regular legislative sessions.

<u>LAWS</u>	<u>SUBJECT</u>
CA 1 (2007)	Increase the size of certain school boards to nine members and conduct elections by mail-in ballot.
CA 2 (2007)	Allow midterm salary increases for county officers.
CA 3 (2008)	Require confirmation of heads of cabinet-level departments or agencies who are subject to senate confirmation at the beginning of each term of a governor.
CA 4 (2008)	Allow school elections to be held with other non-partisan elections.
CA 5 (2008)	Require the governor to fill a vacancy in the lieutenant governor's office by appointment, with consent of the senate.

For adoption, a constitutional amendment requires ratification by a majority of those voting on the constitutional amendment. Proposed constitutional amendments become effective upon approval by the voters unless an effective date is provided within the text of the proposed amendment.

This publication contains the full text of the legislature's joint resolutions proposing the constitutional amendments. Each joint resolution states whether the proposed constitutional amendment amends an existing section of the constitution, adds a new section or repeals an existing section. When an existing section is being amended, new material is shown by underscoring, and language to be deleted is shown within brackets. The title of the joint resolution, appearing in capital letters, is the language that will be shown on the ballot.

Following the text of each proposed amendment are a brief analysis of the amendment and summaries of arguments for and against the amendment. These arguments do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendments. Instead, they represent suggestions of Legislative Council Service staff of arguments in support of and in opposition to the proposed amendments. No claim is made for the validity or consistency of these arguments. Cogent and valid arguments may have been omitted by oversight. No attempt has been made to have the same number of arguments for or against a particular amendment, and the number of arguments does not indicate the weight that should be ascribed to each.

CONSTITUTIONAL AMENDMENT NO. 1

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 12, SECTION 15 OF THE CONSTITUTION OF NEW MEXICO TO INCREASE THE SIZE OF CERTAIN SCHOOL BOARDS TO NINE MEMBERS AND CONDUCT THE ELECTION BY MAIL-IN BALLOT OR AS OTHERWISE PROVIDED BY LAW.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 12, Section 15 of the constitution of New Mexico to read:

"A. In those local school districts having a population of more than two hundred thousand, as shown by the most recent decennial census, the qualified electors of the districts ~~[may choose to]~~ shall have a local school board composed of ~~[seven]~~ nine members, residents of and elected from single-member districts. ~~[If a majority of the qualified electors voting in such a district election vote to have a seven-member board]~~

B. The school district shall be divided into ~~[seven]~~ nine local school board member districts ~~[which]~~ that shall be compact, contiguous and as nearly equal in population as possible. One school board member shall reside within, and be elected from, each local school board member district. Change of residence to a place outside the district from which a school board member was elected shall automatically terminate the service of that school board member, and the office shall be declared vacant.

C. The school board member districts shall be established by resolution of the local school board with the approval of the state legislature, and may be changed once after each federal decennial census by the local school board with the approval of the state legislature.

D. ~~[The]~~ Notwithstanding the provisions of Article 7, Section 1 of the constitution of New Mexico, the elections required under this amendment shall be called and conducted ~~[as]~~ by mail-in ballot or as otherwise provided by law ~~[for other local school board elections]~~. The ~~[state board of]~~ public education department shall ~~[by resolution]~~ establish the terms of the first board elected after the creation of such a ~~[seven-member]~~ nine-member board."

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

Brief Analysis

Constitutional Amendment No. 1 proposes to amend Article 12, Section 15 of the Constitution of New Mexico to increase the size of school boards in school districts with a population greater than 200,000 from seven to nine members. The amendment would also require that elections in school districts with a population greater than 200,000 be conducted by mail-in ballot, or as otherwise provided by law. The only school district that this amendment affects at the present time is the Albuquerque Public School District, but as New Mexico's population increases, other school districts may eventually exceed 200,000. The second-largest school district in New Mexico at the present time is the Las Cruces Public School District, which had a population of 120,950, according to the 2000 census.

Disclaimer

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Arguments For:

1. Increasing the membership of school boards in municipalities with a population greater than 200,000 will allow the board to represent its constituency better. The more people on the board of education of a school district, the more diverse representation there will be from the community. As communities grow, membership of the school board should also grow to reflect and give voice to the constituents in that school district. The proposed amendment would also provide a greater opportunity for citizens to participate in local school issues because it would require a greater number of school board members in large districts.
2. Increasing the number of members on the school board will likely increase the expertise of a school board. A larger board has more opportunity for a diverse membership that brings to the table a variety of backgrounds and skills.
3. Allowing for a mail-in ballot procedure will save money for school districts that are governed by this section of the constitution. Mail-in ballots are more efficient and less costly because there is no need to hire poll workers. Furthermore, if a school district chooses not to use a mail-in ballot procedure, it can hold a school election, as otherwise provided by law.
4. A mail-in ballot procedure will increase voter participation in school district elections. Historically, school board elections have had very low voter turnout. In some cases, less than 12 percent of voters participate in these elections, and anything that might increase the number of

participants is a good idea. A mail-in ballot process is easier for the voters because they do not have to take time off to vote, and mail-in ballots also make voting more accessible for people with physical disabilities. Every voter should be interested in determining who is elected to represent the community on a school board, and the easier it is for a voter to vote, the more likely the voter will do it.

5. In addition to increasing the number of board members in the Albuquerque Public School District to nine, this amendment would allow the legislature to pass legislation allowing Albuquerque school district elections to be held in conjunction with the general election, which could save the district from having to pay the cost of a separate election.

Arguments Against:

1. This amendment unfairly forces voters to cast one vote for two separate and distinct ideas. A voter who believes that changing the size of the school board is a good idea, but that allowing elections to be held by mail-in ballots is not, cannot choose to vote for one provision without voting for the other. This type of "logrolling", i.e., the combining of two independent provisions in the same piece of legislation, is prohibited by Article 19, Section 1 of the Constitution of New Mexico. Voters should vote against this amendment and wait until the issues are presented separately if they wish to vote for only one of them.

2. Government just gets bigger and bigger. A larger school board is not necessarily a more effective school board, and it is difficult to understand how two additional voices will make a positive difference in the effectiveness of the school board. The board of the Albuquerque Public School District is already larger than most other school boards; it has seven members and most other school boards only have five members. Why does Albuquerque need to have such a large school board?

3. Voting by mail raises a number of serious concerns. There is the possibility that the system will be abused with phony signatures and ballot-box stuffing. The risk of vote-buying and other types of improper voter influence or coercion also increases when there is no official supervision of the voting that takes place by mail. There are also concerns about not getting timely delivery of mailed ballots and being unable to contact voters when a signature or registration status is in doubt.

4. The proposed amendment creates confusion because it allows for mail-in ballots for school board members. This conflicts with current law, which strictly limits the use of mail-in ballots to elections on the imposition of a mill levy or a property tax rate for a specific purpose or any special election at which no candidates are nominated for or elected to office. Current law also prohibits mail-in ballots from being combined with an election that also requires in-person voting at a polling place.

(SJR 7, 2007)

CONSTITUTIONAL AMENDMENT NO. 2

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 10, SECTION 1 OF THE CONSTITUTION OF NEW MEXICO TO ALLOW FOR MIDTERM SALARY INCREASES FOR COUNTY OFFICERS.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 10, Section 1 of the constitution of New Mexico to read:

"The legislature shall at its first session classify the counties and fix salaries for all county officers, which shall also apply to those elected at the first election under this constitution. And no county officer shall receive to his own use any fees or emoluments other than the annual salary provided by law, and all fees earned by any officer shall be by him collected and paid into the treasury of the county. A board of county commissioners may provide a midterm salary increase for elected county officers as authorized by law."

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

Brief Analysis

The Constitution of New Mexico currently provides that salaries of county officers cannot be increased during their term of office. Constitutional Amendment No. 2 proposes to amend Article 10, Section 1 of the Constitution of New Mexico to allow county commissions to give midterm salary increases to county officers such as the sheriff, assessor, treasurer, clerk, surveyor and probate judge. The proposed amendment would also allow county commissioners to give themselves a midterm raise.

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Arguments For:

1. Allowing boards of county commissioners the option to give midterm salary increases to elected county officers will help counties retain valuable people who are experienced and knowledgeable, but who may otherwise resign. Midterm increases would offer a financial incentive for county officers to stay in public employment. Costs of living are continually on the rise, yet most county officials are elected for four-year terms without any increase in pay. An increase in the salaries of county officials in the middle of their terms could meet cost-of-living demands.
2. County commissioners are in touch with the work being done by county officers and should be able to reward successful performance and, when necessary, also to offset the effects of inflation in a timely manner. The commissioners are not obligated to give midterm raises and can withhold pay increases when performance has been unsatisfactory. Commissioners are elected officials, and any perceived abuse of this power may be addressed by the voters at the polls.
3. Allowing midterm raises is fair and equitable. Under current law, county commissioners cannot receive a salary increase during their terms in office. Consequently, county commissioners who serve staggered terms may be receiving different salaries while serving on the same board. Approval of this amendment would allow the legislature to enact provisions allowing midterm raises to county officials, thus avoiding the differential pay problem for county commissioners.
4. The legislature has already limited the amount of compensation that different classes of counties may pay their elected officials. Allowing county commissions to increase compensation to sitting board members, or other elected county officials in midterm, would not result in outrageous salary increases for county officers.

Arguments Against:

1. The Constitution of New Mexico currently prohibits an elected county officer from receiving a pay increase or decrease in the middle of the officer's term of office. In part, this provision was designed to take pressure off elected officials to increase the salaries of incumbents. With the approval of this amendment, incumbent county commissioners may now vote to give themselves a pay raise, instead of only being able to give a pay raise to commissioners elected for the next term. This is the type of conflict of interest that the existing constitutional provision prevents.
2. Under current law, when a person runs for public office, whether it be for county clerk, county treasurer, county commissioner or municipal judge, that person knows what the compensation for that office will be for the next four years. There is no incentive or temptation for incumbents to use their power of office to influence others unduly to get increased compensation for themselves. The proposed amendment may encourage public officers to put pressure on county commissioners and legislators to increase compensation for incumbent politicians and, thus, open the door to public corruption, or at least the appearance of impropriety.

3. Allowing county commissioners to vote to increase their own salaries during their terms of office may be an invitation too attractive for them to resist. The increased costs will be borne by the taxpayers.

4. Most counties are having difficulty paying for basic services they are supposed to be providing. Unless there is an increase in the population or the economic activity of the county, there will be no additional source of revenue that will pay for salary increases unless taxes are raised. If the budget of a county is increased to pay for higher salaries and then, for some reason, property tax collections and other revenue in the county decrease, it may be difficult to sustain the increased budget in a smaller county, causing reduced services to be available for county residents.

5. Prohibitions against increasing the compensation of public officers during their terms of office are not unusual and are found in the constitutions of other states as well.

CONSTITUTIONAL AMENDMENT NO. 3

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 5 OF THE CONSTITUTION OF NEW MEXICO TO REQUIRE CONFIRMATION OF CABINET SECRETARIES AT THE BEGINNING OF EACH TERM OF A GOVERNOR.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 5 of the constitution of New Mexico by adding a new section to read:

"The heads of all cabinet-level departments or agencies whose appointment is subject to confirmation by the senate shall be subject to confirmation or reconfirmation by the senate at the beginning of each term of a governor."

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

Brief Analysis

Current law requires that cabinet secretaries be confirmed by the state senate, but, once confirmed, a secretary serves at the pleasure of the governor. Constitutional Amendment No. 3 proposes to add a new section to Article 5 of the Constitution of New Mexico that would require that the heads of all cabinet-level departments or agencies whose appointment is subject to confirmation by the state senate be reconfirmed at the beginning of each term of a governor.

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Arguments For:

1. This proposed amendment will allow voters, through their elected state senators, greater influence on the choice of cabinet secretaries. After living under the administrative regime of a cabinet secretary during the first term of a governor, voters may contact their state senators to let them know how well the secretary has performed. This amendment allows the senate to refuse reconfirmation and, thus, dispense with irresponsible or ineffective secretaries.
2. Confirmable positions can be filled by political supporters who may not be the best choices to manage departments and agencies. It is not enough for an appointee to believe in the governor's policy agenda. It is vitally important that the person be qualified and able to lead, inspire and manage the employees of the agency to which he or she is appointed. Reconfirmation hearings will give the senate the chance to reevaluate the appointee's abilities to perform these most important tasks.
3. How can more scrutiny hurt? In a democracy, citizens should take every opportunity to require their representatives to evaluate the performance of public appointees. In addition, New Mexico taxpayers provide a substantial salary and generous benefits to cabinet secretaries; thus, taxpayers deserve to have "their employees" go through a job-retention evaluation process. The provisions of this amendment still make the state far more lenient than the private sector because the amendment requires only two evaluations over an eight-year period.
4. The governor is the head of the executive branch, and it is logical to assume that the "term of office" of each cabinet-level official appointed by the governor should extend for the term of the governor, not longer. The governor is required to be reelected; cabinet-level officials should be similarly required to be reconfirmed by the senate.

Arguments Against:

1. Reconfirmation will be a waste of time. The original confirmation process presumably involved investigating issues of qualification for the appointment, which qualifications will not have changed at the time of reconfirmation. Merely disliking the actions of the official during his or her first term should not be grounds for the legislature to refuse confirmation, as executive appointments are the province of the governor. If there has been malfeasance or misfeasance, other remedies would apply.
2. Having the senate conduct unnecessary additional confirmation hearings will be an impediment to the smooth flow of legislative business through the chamber and will take time away from the senate's other important duties: introducing, debating and voting on legislation.
3. Continuity in government is valuable. It allows relationships to develop and expertise to build. Allowing the senate to foil an executive secretary's process of learning and building relationships, for reasons that may have to do more with politics than policy, would put a wrench into the important work done by executive agencies.

4. Once an appointee is on the job and has experience, it is up to the governor to determine if the appointee is performing well. The legislature has the opportunity to accept a secretary at the beginning of each governor's term, or whenever the cabinet secretary is first appointed. A second opportunity to review the performance of a secretary is an infringement on the governor's powers and steps over the line that separates legislative and executive powers.

5. The amendment is unclear in several respects, which may lead to litigation. For example, the proposed amendment requires confirmation of certain gubernatorial appointees "at the beginning" of a governor's term of office without proposing to change the current provision that requires confirmation at any point in a governor's term. Also, it is unclear if reconfirmation hearings are required if a lieutenant governor becomes the governor in the middle of a term. Finally, while the composition of the governor's cabinet is spelled out in state law, the amendment is not clear about what constitutes a "cabinet-level" department or agency; different governors have treated various non-cabinet departments as "cabinet-level" for management purposes and it is not clear if those are intended to be covered by this amendment.

CONSTITUTIONAL AMENDMENT NO. 4

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 7, SECTION 1 OF THE CONSTITUTION OF NEW MEXICO TO ALLOW SCHOOL ELECTIONS TO BE HELD AT THE SAME TIME AS NON-PARTISAN ELECTIONS.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 7, Section 1 of the constitution of New Mexico to read:

"Every citizen of the United States, who is over the age of twenty-one years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which ~~[he]~~ the person offers to vote thirty days, next preceding the election, except idiots, insane persons and persons convicted of a felonious or infamous crime unless restored to political rights, shall be qualified to vote at all elections for public officers. The legislature may enact laws providing for absentee voting by qualified electors. All school elections shall be held at different times from ~~[other]~~ partisan elections.

The legislature shall have the power to require the registration of the qualified electors as a requisite for voting and shall regulate the manner, time and places of voting. The legislature shall enact such laws as will secure the secrecy of the ballot and the purity of elections and guard against the abuse of elective franchise. Not more than two members of the board of registration and not more than two judges of election shall belong to the same political party at the time of their appointment."

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

Brief Analysis

Constitutional Amendment No. 4 proposes to amend Article 7, Section 1 of the Constitution of New Mexico to allow school elections to be held at the same time as non-partisan elections. The constitution currently prohibits school elections from being held with any other election. Non-partisan elections include municipal elections, bond elections, hospital elections, conservancy district elections and other special district elections.

Disclaimer

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Arguments For:

1. Voter turnout for school elections is very low. Allowing school board elections to be held with other non-partisan elections will increase voter participation in school board elections. As an example, holding school elections at the same time as another non-partisan election, such as a municipal election, will draw voters who might normally only vote in the municipal election, and it will encourage people who are interested in municipal or other non-partisan election issues also to vote in school district elections.
2. Combining school elections with other non-partisan elections will reduce the number of separate elections held and will help alleviate "voter fatigue". In some New Mexico counties, voters may be faced with as many as 10 elections in any given year, which results in lower voter turnout in most of these separate elections. This amendment will make it more convenient for voters to participate in elections and will encourage more participation and involvement in local governance.
3. School districts incur the cost of holding elections through the county clerk. Combining school board elections with other non-partisan elections will lower school district election costs.
4. The prohibition on holding school elections in conjunction with other elections was established in the early 1900s, when women did not have the full right to vote, and the only elections that women could participate in were school elections. That is no longer the case, and, as such, there is no reason to keep school elections separate from other non-partisan elections.

Arguments Against:

1. Confusing the community-based decision-making of school board elections with other elections does not serve the community or the schools. Setting school board elections aside from all other elections gives voters more direct access to school board candidates; school board election districts are smaller, and the candidates have the ability to become known to their communities without competing with other non-partisan election issues.
2. School elections should be held with regular general elections because that would ensure lower costs and a much higher voter turnout. This amendment prohibits that from happening and

therefore should be defeated. As written, the amendment guarantees neither the lower costs nor the high voter turnout that holding school elections with state and county elections would.

3. This amendment still limits when school elections can be held, and it does so in a way that is hardly workable. Because the regular November general election is always a partisan election, schools will only have the option of holding their elections with non-partisan municipal or special district elections. There often are many municipalities in each school district, and municipalities do not all have their elections on the same day, so choosing to hold a school election in conjunction with one city's election over another city's election will unfairly favor the chosen city's constituents over those living in other towns in the district, as well as over residents living outside the city limits.

4. Adding public school board elections to existing ballots will make those ballots too long and confusing to voters.

CONSTITUTIONAL AMENDMENT NO. 5

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 5 OF THE CONSTITUTION OF NEW MEXICO TO PROVIDE THAT, IN THE CASE OF A VACANCY IN THE OFFICE OF LIEUTENANT GOVERNOR, THE GOVERNOR SHALL FILL THE VACANCY BY APPOINTMENT WITH THE CONSENT OF THE SENATE.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 5 of the constitution of New Mexico by adding a new section to read:

"Whenever there is a vacancy in the office of the lieutenant governor, the governor shall nominate a lieutenant governor who shall take office upon confirmation by a majority vote of all members elected to the senate and shall serve the remainder of the unexpired term."

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

Brief Analysis

Constitutional Amendment No. 5 proposes to amend Article 5 of the Constitution of New Mexico to provide that in the case of a vacancy in the office of the lieutenant governor, the governor will fill the vacancy by appointment, subject to the consent of an absolute majority of the senate. Current law does not provide a procedure for filling a vacancy in the lieutenant governor's position.

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Arguments For:

1. Currently, there is no provision in the constitution that provides for filling a vacancy in the office of lieutenant governor. This constitutional amendment addresses that gap and provides for the appointment of a lieutenant governor in the same manner as for others in the executive cabinet; namely, appointment by the governor with the concurrence of the senate. Such a procedure makes sense because the lieutenant governor is part of the executive cabinet.
2. This amendment would correct an important omission in our succession provisions. The office of lieutenant governor is extremely important and should never be vacant because the lieutenant governor serves both as president of the senate and as successor to the office of the governor. This was most recently felt during the frequent absences of our governor when he was running for president.
3. Under the current law of succession, if there is a vacancy in the offices of the governor and the lieutenant governor, the secretary of state would become governor. This amendment would ensure that only in the rarest of circumstances could this happen. The secretary of state already has many constitutional duties that would be disrupted if that person succeeds to the governorship.
4. The process for replacing a lieutenant governor provided by this amendment is fair and allows the input of both the executive and legislative branches, ensuring that the governor gets to participate and that the legislature has a check on the governor's power. It makes sense to have the same appointment process as for executive officers.
5. This proposal closely mirrors the federal constitution for filling or a vacancy in the office of vice president, except that under this proposal, confirmation by only one chamber is required.

Arguments Against:

1. There has not been a provision providing for the replacement of the lieutenant governor for the past 96 years, and the government has not faltered in that time. Because the office of the lieutenant governor is largely a ceremonial position, there really is no need to provide for an appointment. If such a need should arise, it would make more sense to hold a special election for the position than to leave it to the appointment process.
2. It is not that critically important to fill a temporary vacancy in the lieutenant governor's office. The lieutenant governor presides over the senate during legislative sessions and votes in the case of a tie on substantive issues. This is really the only constitutional duty of the office. The president pro tempore of the senate can preside over the senate if the lieutenant governor cannot do so. This has worked in the past, and there is no reason to think that it will not work in the future.

3. The lieutenant governor is elected by the people. The primary duty of a lieutenant governor is to serve as the governor when the governor is absent from the state or when the governor can no longer serve. The constitution takes into account the possibility that the office of lieutenant governor may become vacant by providing for a succession to the governorship in that event. A vacancy in the office of lieutenant governor should continue until a new lieutenant governor is elected by the people. To allow the governor to appoint the lieutenant governor would give the governor more power than the framers of the constitution intended.

4. The constitution should have a provision for filling a vacancy in the office of lieutenant governor, but this constitutional amendment should not be the one that passes because it creates a potential conflict with another section of the constitution. This proposed amendment requires the governor to appoint a replacement lieutenant governor if that office becomes vacant. However, existing language in the constitution states that if a vacancy occurs in any state office, *except lieutenant governor...*, the governor shall fill that office by appointment. This suggests that the governor cannot appoint a replacement lieutenant governor.

5. The Constitution of the United States provides for the appointment of a vice president with the consent of both the senate and the house of representatives, but the proposed amendment to the state constitution only requires the consent of the senate. The New Mexico provision should mimic the federal provision by requiring the consent of both houses of the legislature.